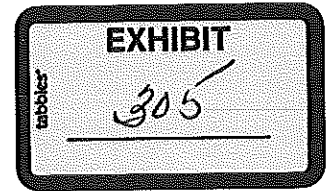




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912



BUREAU OF WATER PROTECTION AND LAND REUSE
OFFICE OF THE BUREAU CHIEF
FEB 04 2010

February 4, 2010

Mr. Paul E. Stacey
Department of Environmental Protection
Bureau of Water Protection and Land Reuse
Planning and Standards Division
79 Elm Street
Hartford, Connecticut 06106

Dear Mr. Stacey:

Thank you for the opportunity to comment on the Proposed Stream Flow Standards and Regulations. In 2005, Governor Rell signed into law Public Act 05-142 which directed the Commissioner of Environmental Protection to establish flow regulations that would apply to all river and stream systems in Connecticut. The law requires the DEP Commissioner to consult and cooperate with other state agencies and an advisory group convened by the Commissioner to adopt the regulations. Ralph Abele from EPA served as a member of the Commissioner's Streamflow Advisory Committee from December 2005 through the late 2009. We were also pleased to provide EPA funds for several elements of the modeling used in the development of the presumptive numeric criteria portion of the proposed regulations.

The proposed regulations require classification of waters into one of four classes and set out criteria for the classes (presumptive standards). The classification scheme attempts to balance the uses described in the statute by setting clear goals and criteria for different classes. A public involvement phase is integral to the proposed classification scheme. The regulations also allow development of a Flow Management Plan as an alternative to the presumptive standard.

A Science and Technical Workgroup was charged with insuring that the regulations would be based on the best available science. Hundreds of hours were devoted to reviewing and adopting the best available science with respect to river ecology, local hydrology and water management relevant to development of the regulations. EPA attended the technical meetings during which these criteria were developed. We believe that the regulations reflect consideration of the best available science in these areas.

Specific Comments

Classification

The narrative standards for Classes 1-3 (Sec. 26-141b-4.) set clear goals for segments of rivers and streams within each class. The goals describe aquatic, biological community conditions for the class, including the level of human activity which has occurred. The narrative standard for Class 4, however, does not contain any mention of aquatic, biological goals. The narrative standard for Class 4 must contain some measure of environmental protection, including a potential for restoration.

Demand management is included in the change of classification and variance portions of the proposed regulations. DEP should factor this into the classification process itself, especially for Class 4.. Provisions should be included in the adoption of classifications section (Sec. 26-141b-5 (a)) similar to wording used in the change of classification section. (Sec. 26-141b-5 (c) (1) (B) (iii) and (iv)).¹

Presumptive Standards

The proposed regulations present both narrative flow standards and presumptive numeric criteria that are designed to protect particular classes. Two types of criteria were developed, a Minimum Flow Release Rule for dam controlled releases and a Maximum Flow Reduction Rule for water withdrawn from groundwater that feeds streams. Both sets of criteria are based on the consideration of the "natural variation of flows." They are designed to be phased in over multiple years.

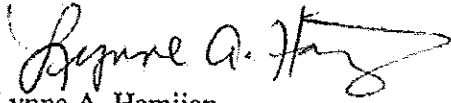
The process used to develop the release rules utilized an iterative reservoir modeling approach, in part funded by EPA. This approach evaluated the effects that a number of potential release scenarios had on effective safe yield and ecological variables. EPA believes that care was given to understand the balance between the requirements for aquatic life and lawful uses of the water throughout this process. EPA believes that the proposed regulations reflect that balance.

Setting clear goals for the streams and rivers of the state coupled with phased implementation of the requirements to protect those waters will hopefully foster effective water management and planning while meeting the statutory requirements to balance streamflow needs to support human uses while maintaining the ecological health of the flowing waters.

¹ (Sec. 26-141b-5 (c)(1)(B)(iii) alteration of the streamflow pattern has been and will continue to be minimized to the extent practicable through the application of all reasonably feasible best management practices, including but not limited to conservation and water reuse; and (iv) alternative sources of water, including inter-basin transfers and development of new sources currently not utilized, have been and will continue to be utilized to the maximum extent practicable

EPA believes that the classification-based approach, using the best available science, taken in the proposed regulations sets up a workable framework for meeting DEP's statutory responsibility in Public Act 05-142. We look forward to seeing a final rule in the near future and we will continue to support your efforts. Please contact Ralph Abele (617) 918-1629 if you have any questions about our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynne A. Hamjian". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lynne A. Hamjian
Surface Water Branch Chief
Office of Ecosystem Protection